

Finding 1. Excessive Coordinated Party Expenditures

Summary

During fieldwork, the Audit staff calculated that DECF appears to have exceeded the 2008 coordinated party expenditures limit on behalf of a House candidate (\$60,000) by \$35,108. Our review identified two media ads (\$82,400) and two direct mail pieces (\$12,708) that appeared to represent coordinated party expenditures.

In response to the Interim Audit Report recommendation, DECF provided statements and documents to support its contention that the expenditures should not be considered excessive coordinated party expenditures. DECF submitted documentation for the direct mail pieces to support its claim that sufficient volunteer activity occurred, and that the expenses qualified for the volunteer materials exemption and were not coordinated party expenditures. In light of the lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, the Audit staff did not count the expenses toward the coordinated party expenditure limit. Regarding the two media ads (\$82,400), however, DECF did not demonstrate that it was granted additional spending authority beyond \$60,000. As a result, DECF exceeded its coordinated party expenditures limitation by \$22,400 (\$82,400 - \$60,000).

The Commission approved a finding that DECF exceeded its coordinated party expenditure limitation by \$22,400. In reaching its conclusion, the Commission noted that, based on the reports filed by the Democratic Congressional Candidate Committee (DCCC), the combined coordinated expenditure limit of \$84,200 was not exceeded on behalf of the House candidate.

Legal Standard

A. Coordinated Party Expenditures. National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits. Such purchases are termed “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting-age population.
- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits. 2 U.S.C. §441a(d) and 11 CFR §§109.30 and 109.32.

B. Assignment of Coordinated Party Expenditure Limit. A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

C. Volunteer Activity. The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

1. Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

Facts and Analysis

A. Facts

The coordinated expenditure limit for the 2008 election cycle for a U.S. House of Representatives candidate in the state of Florida was \$42,100. DECF provided documentation from the DCCC showing that it authorized DECF to spend \$17,900 of its limit on behalf of Annette Taddeo, a candidate for the U.S. House of Representatives. Therefore, DECF's coordinated spending limit for this candidate was \$60,000.

The Audit staff identified four disbursements, totaling \$95,108, on behalf of Annette Taddeo. Two disbursements (\$82,400) were for media ads. The remaining two disbursements (\$12,708) were for direct mail pieces. DECF disclosed the cost of one ad and both mail pieces as federal election activity on Line 30b of its disclosure reports. The cost of the remaining ad was disclosed as an operating expenditure on Line 21b.

One of the two ads discussed the candidate's position on health care. The other ad discussed the opponent's voting record on health care and taxes. The disclaimer for each ad stated, "Paid for by the Florida Democratic Party and Taddeo for Congress, Approved by Annette Taddeo."

Regarding the direct mail pieces, a vendor located in Virginia processed and mailed the two direct mail pieces (one in English, the other in Spanish). The file for this vendor included an email communication from a vendor representative to a representative of DECF requesting approval of the direct mail piece. The vendor also copied the Taddeo campaign on the email.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided DECF representatives with a schedule of the apparent excessive coordinated expenditures. In response, DECF stated its belief that it was authorized to spend an additional \$22,400 because the DCCC had reported spending only \$1,754 in coordinated campaign expenditures on behalf of candidate Taddeo. DECF also stated that the combined total spent on Taddeo was less than the \$84,200 available¹. DECF contends that the DCCC and DECF coordinated to achieve this and that the remaining authority would have been transferred to DECF. DECF also stated that the Taddeo mail pieces represented exempt activity.

The Interim Audit Report recommended that DECF demonstrate that it did not exceed its coordinated spending limit by providing evidence that:

- It received additional spending authority from the DCCC prior to spending in excess of its \$60,000 limitation; and
- There was volunteer involvement with respect to the direct mail pieces.

Absent such evidence, the Interim Audit Report recommended that DECF obtain a refund of \$35,108 (\$95,108 - \$60,000) from Taddeo for Congress and provide evidence of the refund received.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, DECF stated that the audit report correctly states that DECF reported coordinated expenditures of \$95,108 on behalf of Annette Taddeo.² DECF acknowledged that DECF paid for two media ads, totaling \$82,400, on behalf of the candidate and that prior to making these expenditures, the DCCC assigned \$17,900 of its coordinated expenditure limit to DECF. DECF also submitted a letter, dated September 22, 2011, from the DCCC to explain the coordinated expenditure authority. The letter stated, "[t]he DCCC's current records show a transfer (of) \$17,900 in coordinated expenditure authority in connection with this election to the Florida Democratic Party on October 29, 2008. While we can locate no further records of other transfers of authority to your committee in connection with this election, we did support

¹ DECF had a coordinated expenditure spending limit of \$42,100 and the National Party Committee also had a coordinated expenditure spending limit of \$42,100.

² Disclosure reports subject to this audit did not disclose any coordinated expenditures for Annette Taddeo. (See Finding 2.)

Ms. Taddeo's candidacy – both before and after the date of the above transfer – and we know of no reason why any requested or needed transfer of authority would have been withheld at the time.”

Regarding the two mail pieces, DECF stated that the mail pieces were actually prepared with substantial volunteer participation and, therefore, met the volunteer materials exemption and should not be considered coordinated party expenditures. DECF also provided a copy of a photo that it believed demonstrated volunteer participation. In light of the lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, the Audit staff did not count the expenses toward the coordinated party expenditure limit.

In response to the Interim Audit Report, neither DECF nor the DCCC could locate a record authorizing additional spending authority. As noted in the legal standards above, 11 CFR §109.33(a) requires that an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. In similar cases, the Commission has rejected assignments of spending authority after the fact.³ Absent evidence of additional spending authority from the DCCC, DECF's coordinated spending limit was \$60,000 and DECF exceeded its coordinated expenditure limitation by \$22,400 (\$82,400 [media ad expenditures] - \$60,000 [DECF's coordinated spending limit]).

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff noted that DECF had not demonstrated, in writing, that it was granted additional spending authority beyond \$60,000. As a result, the Audit staff concluded that DECF exceeded its coordinated party expenditure limitation by \$22,400 (\$82,400 - \$60,000).

E. Committee Response to the Draft Final Audit Report

DECF contended that the Final Audit Report should note that the combined coordinated expenditure limit of \$84,200 was not exceeded for Annette Taddeo. DECF further added that “although there may have been a paperwork error with respect to the transfer of this unused authority, the authority held by the DCCC was in fact, unused. Therefore, as a practical matter, the combined 441a(d), in total, had not been exceeded and thus, no unfair advantage had been conferred upon the DECF or the Taddeo campaign.”

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF exceeded its coordinated party expenditure limitation by \$22,400.

The Commission approved the Audit staff's recommendation. In reaching its conclusion, the Commission noted that, based on the reports filed by the Democratic Congressional

³ Final Audit Report on Missouri Democratic State Committee, MUR 5274. Final Audit Report on the California Republican State Committee, MUR 5246.

Candidate Committee, the combined coordinated expenditure limit of \$84,200 was not exceeded on behalf of the House candidate.

Finding 2. Failure to Itemize Coordinated Party Expenditures

Summary

During fieldwork, the Audit staff identified 64 expenditures, totaling \$207,665, which DECF did not itemize on Schedule F (Itemized Coordinated Party Expenditures). DECF made the expenditures on behalf of six congressional candidates. Subsequent to the start of audit fieldwork, DECF filed amended reports that substantially disclosed the expenditures in question as coordinated party expenditures on Schedule F.

In response to the Interim Audit Report recommendation, DECF made no additional comments on this matter. DECF has corrected the public record with respect to these transactions.

The Commission approved a finding that DECF failed to itemize coordinated party expenditures of \$194,957.

Legal Standard

Reporting Coordinated Party Expenditures. Each political committee shall report the full name of each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR Part 109, Subpart D (2 U.S.C. §441a(d)), together with the date, amount and purpose of any such expenditure as well as the name of, and office sought by the candidate on whose behalf the expenditure is made. 11 CFR §104.3(b)(1)(viii).

Facts and Analysis

A. Facts

The Audit staff identified 64 expenditures, totaling \$207,665, that DECF did not itemize on Schedule F as coordinated party expenditures. The expenditures were made on behalf of six congressional candidates and included payments for staff salaries, direct mail, cell phones and media ads. Subsequent to the start of audit fieldwork, DECF filed amended reports that substantially disclosed the expenditures in question as coordinated party expenditures on Schedule F.

B. Interim Audit Report & Audit Division Recommendation

This matter was presented at the exit conference. In response, DECF stated that it believes two of the disbursements, totaling \$12,708, were volunteer mailings (Taddeo mail pieces discussed in Finding 1) and thus would not need to be reported on Schedule F. The Interim Audit Report recommended that DECF provide any additional information or comments it considered relevant to this matter.

C. Committee Response to Interim Audit Report

In response, DECF did not have any additional comments on this matter. As explained in Finding 1, there is a lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption. As a result, expenses for two direct mail pieces totaling \$12,708 were not classified as coordinated party expenditures. Therefore, the amount of expenditures not previously itemized on Schedule F is \$194,957 (\$207,665 - \$12,708). DECF has corrected the public record with respect to these transactions.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that DECF has corrected the public record with respect to the transactions identified. DECF's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF did not itemize coordinated party expenditures of \$194,957 on Schedule F.

The Commission approved the Audit staff's recommendation.

Finding 5. Disclosure of Disbursements

Summary

During audit fieldwork, the Audit staff calculated that disbursement entries, totaling \$9,554,713, contained inadequate or incorrect disclosure information. In response to the Interim Audit Report recommendation, DECF filed amended reports that materially corrected the disclosure errors.

The Commission approved a finding that DECF did not properly disclose disbursements of \$9,554,713.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- amount;
- date when the expenditures were made;
- name and address of the payee; and
- purpose (a brief description of why the disbursement was made—see below).
2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

B. Examples of Purpose. Adequate Descriptions. Examples of adequate descriptions of "purpose" include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(3)(i)(B).

Inadequate Descriptions. The following descriptions do not meet the requirement for reporting "purpose": advance, election-day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B) and Commission Policy Statement at www.fec.gov/law/policy/purposeofdisbursement/inadequate_purpose_list_3507.

Facts and Analysis

A. Facts

The reported purpose of the disbursement, when considered with the identity of the disbursement recipient, must clearly specify why the disbursement was made. The Audit staff reviewed disbursements itemized by DECF for proper disclosure on both a sample and 100 percent basis. These reviews resulted in errors totaling \$9,554,713. This amount comprises projected errors totaling \$1,708,395 from the sample review and \$7,846,318 in errors from the separate review conducted on a 100 percent basis.⁴ The disclosure errors identified in each review were similar.

From the 100 percent review, more than \$7,300,000 of the disclosure errors was for campaign materials that, for the most part, (1) described then-Senator Obama's position on issues, (2) compared then-Senator Obama and Senator McCain's position on issues or (3) were for get-out-the-vote telephone calls authorized by Obama for America. The majority of errors in the review were for inadequate or incorrect purposes disclosed.

Examples of incorrect purposes included the following:

- Three mail pieces that described Senator McCain's position on an issue were disclosed as either "Absentee/Early Vote Mail" or "Direct Mail/Early Vote." The mail pieces did not discuss obtaining an absentee ballot or voting early.
- A mail piece that stated vote Obama and provided polling locations, voting and ride information was disclosed as "Generic Literature."

Examples of inadequate purposes included the following:

- Payments for automated phone banks by or on behalf of then-Senator Obama that asked for your vote or provided information on polling locations were disclosed as "Telephone Calls" or "Generic Telephone Calls."
- Payments for mail pieces that described then-Senator Obama's position on issues, Senator McCain's position on issues or the positions of both candidates were disclosed as Literature, Generic Mail, or Direct Mail.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference. In response, DECF representatives stated they would review this issue. The Interim Audit Report recommended that DECF amend its reports to correct the disclosure errors.

⁴ The error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the result of a 100 percent review of items not in the sample population. The sample estimate could be as low as \$1,350,377 or as high as \$2,066,413.

C. Committee Response to Interim Audit Report

In response, DECF filed amended reports that materially corrected the inadequate and/or incorrect disclosure information.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that DECF had amended its reports to materially correct the inadequate and/or incorrect disclosure information. DECF's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF did not properly disclose disbursements totaling \$9,554,713.

The Commission approved the Audit staff's recommendation.

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Receipt of Contribution that Exceeds the Limit

Legal Standard

A. Party Committee Limits. A party committee may not receive more than a total of \$10,000 per year from any one contributor. 2 U.S.C. §441a(a)(1)(D) and (f); 11 CFR §110.1(c)(5)

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
 - o Keep enough money in the account to cover all potential refunds;
 - o Keep a written record explaining why the contribution may be illegal;
 - o Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - o Seek a reattribution of the excessive portion, following the instructions provided in Commission regulations; and,
 - o If the committee does not receive a proper reattribution within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

Facts and Analysis

DECF received a \$50,000 contribution from Gerald T. Vento on September 24, 2008. Of this amount, \$20,000 was deposited directly into DECF's federal account and \$30,000 was deposited directly into its non-federal account. On April 22, 2009, DECF refunded \$10,000 to the contributor. The refund was not timely as it occurred 210 days after the contribution was deposited. It should be noted that DECF maintained, at all times, sufficient funds to make the necessary refund.

The matter was discussed at the exit conference. In response, DECF stated it received a \$20,000 contribution from the contributor. The deposit was structured so that \$10,000 was to be deposited into the DECF's federal account and \$10,000 into its non-federal account. DECF further stated that the deposit was recorded as such in the accounting software and reported. However, the entire amount was inadvertently deposited into the federal account. Upon discovering the discrepancy, DECF refunded \$10,000 to the contributor.

DECF appears to have misrepresented this transaction. The Audit staff has a copy of the contributor's check (\$50,000) and copies of deposit tickets for both the federal and non-federal accounts. Further, DECF's electronic files and disclosure reports both indicate that the contributor made a \$20,000 contribution. The Audit staff stands by its representation of the facts.

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